

OPENING STATEMENT

of

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Commissioner
Federal Communications Commission

Before the

Subcommittee on Communications
of the Senate Committee on Commerce, Science and Transportation

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FCC COMMISSIONER MICHAEL K. POWELL
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS
OF THE SENATE COMMITTEE ON COMMERCE, SCIENCE AND
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Good morning, Mr. Chairman and distinguished members of the Subcommittee. I am delighted to be here today to assist you as the Subcommittee deliberates the statutory reauthorization of the Federal Communications Commission. Because I know that you have specific questions for my colleagues and me, I will keep my remarks very brief.

In the seven months that I have been at the Commission, I have been struck by the fact that this agency is responsible for a truly historic and important job. As provided by the Telecommunications Act of 1996, the Commission is directed to implement the momentous transformation of the telecommunications industry from a highly-regulated, closed-market regime to a pro-competitive, de-regulatory regime. The entire Commission -- from the Commissioners to the dedicated and capable employees in the bureaus -- is consequently working to alter the legal and regulatory structure that governed the communications industry for nearly a century, change the fundamental economics that drive the industry's growth, and spur technological innovation, all in a way that does not trample the American consumer.

We are all witnesses to the dramatic changes in the communications industry: in wireline telephony, competition in the local and interexchange telephone markets is slowly but surely becoming reality; in television broadcast, digital technology is taking over; in terrestrial wireless, as evidenced by the Commission's recent report on wireless competition, there are encouraging signs of continuing and increased subscribership, increased revenues, increased infrastructure investment, more market entrants, and decreasing prices; and in multi-channel video service, there are increasing numbers of DBS, MMDS, traditional franchise cable, and telephone companies that are offering a panoply of innovative and competitive programming bundles.

In considering the Commission's future role in continuing the work of the 1996 Act as well as the Communications Act, I am committed to working with this Subcommittee as we at the FCC attempt to keep pace with truly competitive and deregulated markets driven by rapidly evolving -- and, increasingly often, converging -- advanced technology and services. For my own part, I have urged policymakers and industry players to continue (i) to believe in the transformation to a competitive and de-regulated telecommunications marketplace; (ii) to promote innovation, because

innovation breeds new markets and shatters the entrenched advantages of incumbency, as the recent history of communications has shown; (iii) to address convergence, because technology will continue to erase the differences that historically have justified regulating different services differently and thereby force policymakers to reconcile these conflicting regulatory approaches; and (iv) to strengthen enforcement, rather than continuing to rely on prospective, prophylactic regulation. Let me elaborate briefly on each of these four tenets.

COMPETITION

First, I believe devoutly that this great communications revolution demands a much more committed and sincere faith in consumers as well as the competitive and de-regulated marketplace. The 1996 Act commands policymakers and industry to move away from the monopoly-oriented, over-regulatory origins of communications policy and toward a world in which the market, rather than bureaucracy, determines how communications resources should be utilized. Yet, so often, policymakers cannot actually bring themselves to let go, to jump off our regulatory perch. Indeed, many policymakers have a tendency to over-credit regulatory action for creating competition.

Let me point out that competition is a journey, rather than a destination. Competition promises to allocate goods to their highest and best uses and has been shown to be indispensable to innovation. Competition is a self-correcting dynamic process, not a static state. No policymaker can accurately or timely declare the arrival of competition, and thus one should not justify continued regulation on that premise.

It is important to emphasize that continued regulation is not costless. It imposes direct opportunity costs on the competitive process. I readily concede that regulatory intervention has its place, but it must be fully understood that it distorts the competitive process from seeking economic efficiency and often, thereby, puts at risk the possibility that things will reach their highest and best uses. Regulatory intervention interjects the regulator between commercial providers and their consumers and thus fundamentally infringes upon the key relationship that makes markets work.

Regulatory intervention also fundamentally affects the risk to capital and often skews the decisions of the capital markets. Competition growth is highly dependent on a steady flow of large amounts of capital, and even our most minor or inadvertent intervention often sours the enthusiasm of investors. Such intervention introduces uncertainty, and thus new risks. There are many forms of this risk: risk that regulation will stifle the full potential of a new business, risk that regulators will change their minds in mid-stream and adversely affect business plans already implemented and risk that regulations once on the books will linger on, long after their useful life has expired.

We cannot allow the debate of telecommunications to collapse into a finger-pointing exercise regarding who is pro-business and who is pro-consumer. It is a grave mistake to believe that favoring competition and free markets somehow is

favoring the interests of businesses over consumers. Quite the contrary, I think it is absolutely clear that competition and markets are the most consumer-benefiting mechanisms ever to be devised. Competition puts consumers into the decisional game by creating powerful incentives to satisfy consumer preferences and by leveraging the broadest possible set of resources to accomplish this goal. As the economist Friedrich von Hayek noted, markets are superior to planned economies because they "utilize the knowledge and skill of all members of society to a much greater extent than would be possible in any order created by central direction."

TECHNOLOGICAL INNOVATION

My second observation is that policymakers, industry players, politicians, investors, analysts and consumers would do well to recognize that the only constant in the telecommunications revolution is change itself. Innovation breeds new markets, and shatters the entrenched advantages of incumbency, as the recent history of telecommunications has shown. As such, policymakers must, even as they strive to correct short-term problems, work to avoid (i) slowing the pace of innovation in technology and service offerings and (ii) inadvertently picking or conferring advantage to a particular technology or service.

If regulation is necessary at all, it should be flexible and consistent with the competitive markets to maximize consumer benefit, choice and preference. Markets have always proven to be better than central planning models at empowering consumers to bring technology and services to their highest and best use. Policymakers should also pursue policies that are technologically-neutral, and that will promote technological innovation. We cannot possibly predict accurately the direction and impact of fast changing technology, nor are we able to guess correctly whether or not consumers will embrace one technology or another. We must keep that in mind and make sure that we are not prevented from utilizing some breakthrough technology because we have committed ourselves to something else, or conferred a decisive competitive advantage to an incumbent, a specific type of technology or particular use of technology.

We must also respect the need for speed. This is not a time for the timid. The advance of innovation continues in leaps and bounds, spurred most notably by advances in microprocessing technology. Moore's law holds that the maximum processing power of a microchip, at a given price, doubles roughly every eighteen months. We would be well advised to adopt the urgency that Moore's law suggests in all telecommunications markets, including telephony, which I dare say is not accustomed to such explosive changes.

REGULATORY AND TECHNICAL CONVERGENCE

My third observation is that policymakers would be well-advised to focus on regulatory and technical convergence. Communications historically has been

regulated (or not regulated) according to the method of transmission. Services and capability offered via one method of transmission could not, as a general matter, be offered via a second method of transmission in a manner that customers would view the two services as substitutes for each other. What ultimately developed was a form of "apartheid" among the various telecommunications services whereby, for example, telephony -- and its attending regulatory, legal and economic structure -- was contained under Title II of the Act, cable was contained under Title VI, and so on.

Such regulatory balkanization was sustainable in the era before digitalization, but policymakers are fast approaching a moment of truth in which we will have to decide whether digital services similar to those traditionally offered over one medium should be regulated in the same manner as services offered over another medium. As digital technology erases the differences between various communications services, communications policymakers will need to reconcile conflicting regulatory approaches in a way that reinforces forward-thinking, pro-competitive approaches and discards outdated approaches.

ENFORCEMENT

Finally, communications policy leaders should look to enforcement as a means to protect the public against certain identifiable harms without hindering companies from improving their existing offerings or from entering new markets that lie outside their traditional regulatory boundaries. Communications policy has historically emphasized prospective, prophylactic regulation, whereby companies providing one type of service were regulated with respect to the way they provided that service and were legally precluded from offering other types of services. This approach tended to preserve the arbitrary regulatory distinctions that technological innovation acts to eliminate. Antitrust law, however, illustrates an alternative approach — one that emphasizes performance measurement and vigorous enforcement rather than prospective regulation.

In closing, I submit that it is not time to look backward, for I believe that we have passed the point of no return in the transition to competitive markets. I firmly believe that, even if policymakers do nothing, technical innovation and competition will march on, though perhaps hobbled by existing regulatory regimes. As technology evolves, even the most entrenched incumbents will, in the long run, find themselves supplanted by new market entrants who will be committed to implementing innovative business plans involving new and advanced services. This does not mean that policymakers should avoid the hard work of tearing down the market barriers that law, economics or history have erected, just that we should not delude ourselves that our actions are more important than those of competitors in the marketplace.

I undertake my responsibilities as an FCC Commissioner with a healthy and sober understanding of the Commission's obligations under the Communications Act of 1934, and the Telecommunications Act of 1996. I recognize the fact that the

Commission is an extension of Congressional power. As we at the Commission do our work, we must acknowledge that the Commission has only the authority which has been expressly delegated to it by this venerable body.

I look forward to continuing to work with the members of this Subcommittee and with my colleagues on the many challenges, and tremendous opportunities, that await us in implementing the 1996 Act. I trust that, by working collaboratively and by having faith in the competitive and de-regulated telecommunications marketplace, we will bring the benefits of competition, choice, and service to American consumers.

Thank you for your interest. I will be happy to answer any questions.